UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.358
21 January 1997

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Fourteenth session

SUMMARY RECORD OF THE 358th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 January 1997, at 3 p.m.

Chairperson: Mr. HAMMARBERG
(Vice-Chairperson)

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GE.97-15096 (E)

In the absence of Mrs. Belembaogo, Mr. Hammarberg, Vice-Chairperson, took the Chair.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Myanmar (continued) (CRC/C/8/Add.9 (English only); CRC/C/Q/Mya.1 (list of issues); written replies by the Government of Myanmar with no document symbol)

1. At the invitation of the Chairperson, the delegation of Myanmar resumed its place at the Committee table.

2. The CHAIRPERSON invited the members of the Committee to ask further questions concerning the section of the initial report of Myanmar (CRC/C/8/Add.9) entitled "General measures of implementation".

3. Mrs. KARP said she had received no answer to her questions concerning the status of the national and local committees on the child. Were they consultative, or decision-making bodies; were they allocated budgets; were they distributed throughout the country; and what was their relationship with the local Law and Order Restoration Councils? What three priority areas would the Myanmar authorities single out when applying for international technical assistance?

4. Mrs. EUFEMIO said she had received no answers to her three questions concerning the geographical distribution of non-governmental organizations (NGOs), on teamwork between NGOs and the authorities and on the inclusion of child development in training programmes.

5. She noted that a member of the Myanmar delegation had stated that about 4 million kyats had been allocated for social services, including child welfare services, in the 1995/96 budget, 1 million of which had been channelled into new child-care facilities. Three million kyats had thus not been accounted for. In connection with the financial constraints facing the Government, she asked what criteria were used in determining priorities among infrastructural programmes, and what indicators were used to evaluate the effectiveness of those programmes.

6. Miss MASON reiterated her request for clarification regarding the various levels of citizenship (full, associate and naturalized), to which she had received no response. The impression she had gained was that different levels of citizenship conferred differing levels of opportunity on children in areas such as health, education and linguistic rights. She also requested answers to her questions on the extent of children's participation in dissemination of awareness of the Convention, and on the relative status of the Child Law and the provisions of other laws in the event of a conflict between them.

7. The CHAIRPERSON invited the delegation of Myanmar to respond to the points raised regarding interaction between the representatives of United Nations bodies and the Myanmar authorities.

8. U AYE (Myanmar) said that his failure to reply to some of the questions asked by members was attributable to the fact that other members of the delegation were better qualified than himself to respond to certain questions.

9. While he did not see that the matter had any direct bearing on the rights of the child, he wished to point out that reference to the verbatim records of the fifty-first session of the General Assembly, and to the summary records of the Third Committee, would reveal that the Permanent Representative of Myanmar in New York had recently confirmed officially that ongoing relations between the authorities, the Special Representatives of the Secretary-General and the Special Rapporteur of the Commission on Human Rights existed in various areas.

10. While his Government dissociated itself from the resolution that had appointed a Special Rapporteur on the situation in Myanmar, which it regarded as unbalanced, it had always cooperated with the Commission. The previous Special Rapporteur had frequently visited Myanmar, and the current Special Rapporteur had been invited to do so at a mutually convenient time.

11. The CHAIRPERSON invited the delegation of Myanmar to reply to the questions relating to the national budget.

12. U DENZIL ABEL (Myanmar), responding to observations that the budgetary allocations for social welfare were low in comparison with the appropriations for defence, said that the transition to a free-market economy called for various adjustments. Thus, while defence expenditures set two to three years previously in response to high levels of insurgency were currently being reduced following cease-fire agreements, the Government was also having to establish priorities with a view to securing quick returns in dynamic sectors of the economy, thereby generating more resources for the social sector. In 1995/96, 6.4 per cent of the budget had been allocated to social services. Future budgets would be remodelled to take account of the projected needs.

13. Mrs. SANTOS PAIS said that allocations for the social sector were thus only about half of those earmarked for defence. The principle set forth in the Convention that the maximum available resources should be allocated to the social sector was thus not reflected in practice.

14. Mrs. KARP asked what proportion of the budget was allocated to the national and local committees on the rights of the child.

15. U AYE (Myanmar) said that his delegation had already undertaken to contact the Central Statistical Office with a view to providing the breakdown of figures that had been requested. More expenditure was undeniably needed in the social field, but the issue was not just one of income distribution, but also of income generation.

16. As for the "20-20 rule" to which members of the Committee had alluded, his delegation welcomed all such recommendations and would also benefit from the fruits of its interaction with other delegations, which it would transmit to the National Committee with a view to improving the situation in Myanmar.

17. Mrs. BADRAN said that the Myanmar authorities should bear in mind the fact that the social and economic sectors constituted an indivisible whole. Human resources were essential to the prosperity of the economic sector.

18. U AYE (Myanmar) said that his Government attached great importance to investment in human resources, within the limits imposed by financial and time constraints.

19. The CHAIRPERSON said that the Committee's message was that social expenditure on children was low. The "20-20 rule" was considered a reasonable level for social expenditure, and Myanmar's expenditure was at less than half that level. A recommendation in that regard would appear in the written conclusions.

20. He invited the delegation of Myanmar to respond to members' questions concerning NGOs.

21. U THAN PO (Myanmar) said he would try to respond to the questions concerning NGOs and to other questions raised at the previous meeting. No separate secretariat existed to service the National Committee on the Rights of the Child; that task was carried out by the Department of Social Welfare, which was allocated a budget for the purpose. In order to implement the provisions of the Child Law, 139 provision officers and 78 voluntary provision officers had been trained in 1995 and 1996, in addition to staff in primary schools and day-care centres. More social workers could be trained if further international assistance became available.

22. Between 1993 and 1996, 2,678 cases of children in need of protection had been referred to the Director-General of the Department of Social Welfare for approval. Of those cases, 655 had been returned to their families; the rest had been placed in institutions, where they were receiving formal education and vocational training.

23. The minimum age for participation in military activities was 18 years of age, or 16 in the case of the Red Cross Brigade. Information on the Child Law had been translated into six of the country's indigenous languages. Dissemination posed a problem, however, given that the country had no fewer than 135 ethnic groups. Plans to disseminate information on children's rights had been discussed with the relevant ministries and with the United Nations Children's Fund (UNICEF), and it had been agreed to use the Committee's recommendations at its current session as a basis for action in that regard.

24. The National Committee on the Rights of the Child was presided over by the Minister of Social Welfare, and its members included senior officials from many areas of the administration, as well as representatives of NGOs and of the private sector. As yet, there had been no opportunity to evaluate the work of that Committee. Law and Order Restoration Councils at district and township levels were authorized by the State Law and Order Restoration Council (SLORC) to take action to implement children's rights.

25. International NGOs wishing to provide assistance could submit their proposals to the relevant ministry through the Ministry of Planning. If those proposals were deemed to be in the national interest, the NGO would then be authorized to cooperate with the relevant ministry.

26. So far there was no provision for a dialogue between children and the Government. However, radio and television talk shows were envisaged for the future.

27. Myanmar sorely needed technical assistance to help and advise on the subject of disabled children, their rehabilitation and education.

28. In response to the question of how social changes had mirrored economic changes in the country, he said that a number of NGOs had helped establish night schools and youth centres which were run on a voluntary basis and catered for children who had to work during the day.

29. The CHAIRPERSON asked for further clarification as to whether the National Committee on the Rights of the Child was a decision-making or advisory body.

30. U THAN PO (Myanmar) said that the National Committee was the highest body in the land dealing with the rights of the child. Its Chairman, who was also a Government Minister, could decide on some of its policies or, in the event of a complex issue, could seek the advice and approval of the Cabinet.

31. Mr. MOMBESHORA asked if children were involved in the functioning of the National Committee.

32. Mrs. SANTOS PAIS inquired about the degree of success of the work of the National Committee in terms of its coordination, guidance and reporting functions. She had heard it stated that only 25 per cent of children were actually being reached by Government policies and that the national plan of action was not fully operational. She therefore asked how the Government received feedback from local authorities; how disparities in the coverage of children in different regions were being overcome; how the necessary resources were allocated to local levels and how far the National Committee was able to make a difference to the lives of children at the sub-regional level.

33. Mrs. KARP suggested that concrete examples of decisions reached by the National Committee and of issues it had referred to the executive should be given, together with instances of action it had taken as a result of feedback from townships and local authorities.

34. U AYE (Myanmar) said that the structure of the National Committee did not provide for the participation of children.

35. Mr. MOMBESHORA said that reports indicated that there was a lack of communication between student and children's groups and the authorities. The Convention specifically provided that children should have the right to make their views known, and the National Committee would appear to be the ideal vehicle to enable them to exercise that right.

36. U THAN PO (Myanmar) said that there was direct contact between the National Committee and other committees working at a lower level on children's issues, and the National Committee was at liberty to turn to the Government for advice or information.

37. One example of the kinds of decisions taken by the National Committee was its ruling that, in one specific case, the judgement and punishment handed down by a court on a child should be overturned.

38. Mrs. SARDENBERG said that she was still not clear as to whether the National Committee was competent to formulate policies or simply to monitor their implementation or whether it operated on a multi sectoral basis.

39. U AYE (Myanmar) said that the structure of the National Committee, which was basically a coordinating body, was such that there were representatives of all ministries and departments of relevance to children. They were thus part of the decision-making process and able to ensure that policies were duly noted in their respective fields of competence.

40. Mrs. KARP expressed concern at the power of the National Committee to overturn a court decision, which raised the question of the independence of the courts.

41. U AYE (Myanmar) said that the court case referred to had involved only a minor transgression on the part of the child. The decision had been overruled because it had been clear that the judge in question was not familiar with the provisions of the Child Law. If there were any doubts about a judgement in a case of a serious crime, the advice of the Cabinet would have to be sought and it would be out of the hands of the National Committee.

42. U SANN MAUNG (Myanmar) said that, after Myanmar became party to the Convention on the Rights of the Child, it had begun the process of amending or repealing legislation that was not in line with the Convention's provisions or drafting new instruments, one of which was the Child Law.

43. Miss MASON said that, as she understood it, where there was a conflict in domestic legislation between the Child Law and the Penal Code, it was the Penal Code that would prevail.

44. U AYE (Myanmar) said that, in any such conflict, the Child Law would be applied and respected. However, that scenario had never arisen.

45. Mrs. SANTOS PAIS asked what would happen in the event of a conflict between the provisions of the Convention and the Child Law. She also asked for clarification as to how the provisions of the Convention would be applied to cover areas that were not dealt with in domestic legislation, such as the prohibition of torture, which was clearly stated in the Convention but not in the Penal Code of Myanmar.

46. U AYE (Myanmar) said that, if lower court decisions conflicted with the provisions of the Child Law or the Convention, appeals could be made to the higher courts.

47. In response to a question from Mr. KOLOSOV, he said that the Child Law contained a provision making it clear that, in any conflict between various instruments of domestic legislation, the Child Law would prevail.

48. Mrs. KARP said that, further to a question she had asked at the previous meeting, it appeared that schoolchildren could not form associations, so that their freedom of association, in accordance with article 15 of the Convention, was restricted. She wondered whether schoolchildren who formed associations were prosecuted or whether the Convention and the Child Law prevailed.

49. U HLA BU (Myanmar) said that applications to form associations must be submitted to the Home Department. Many schools had, for example, Red Cross associations, under the patronage of the head teacher.

50. The CHAIRPERSON said that, although Mr. Kolosov had been informed that the Child Law prevailed over other domestic legislation, it seemed that that was not so in respect of freedom of association.

51. U AYE (Myanmar) said that, if the proposed association did not violate the relevant regulations, then the Home Department would authorize it. If the association had nothing to do with children's affairs, however, then the question of the underlying motives of its formation arose and whether, in actual fact, the initiative was being taken by adults. In such cases, the Child Law would not apply.

52. The CHAIRPERSON, referring to a question asked by Miss Mason, said that the Citizenship Law divided citizens into three categories. He would like to know what the impact of that arrangement on children was.

53. U SANN MAUNG (Myanmar) said that the three categories of full citizen, associate citizen and naturalized citizen had been established by the 1982 Citizenship Law, which also specified the criteria for admission to each category. Applications for citizenship were considered by a three-man committee of officials of the Home Department and the Ministries of Defence and Foreign Affairs. All three categories of citizenship carried equal rights and privileges except in two respects: associate and naturalized citizens could vote in elections but could not stand for office and their citizenship could be revoked, whereas full citizenship could not. Members of Myanmar's 135 ethnic groups were all regarded as full citizens.

54. Mrs. SANTOS PAIS said that the categorization of citizenship seemed to reopen the question as to which legislation prevailed, since it clearly implied the possibility of discrimination. She would like to have more information about the differences in the rights enjoyed by the three categories of citizen. For example, were citizens in all three categories entitled to own property and make use of the social services?

55. U AYE (Myanmar) said that all citizens could own property and had equal access to services.

56. Mrs. SANTOS PAIS said that she understood that, in order to qualify for full citizenship, a person had to prove that one of his ancestors had lived in Myanmar prior to 1823. She would like to know the exact qualifications for

full citizenship and the nature of the document which certified its possession. If identity cards were used, what were the conditions regulating their issue and were there any differences in treatment according to the status established by the cards, for example, could citizens of all categories move freely about the country?

57. The CHAIRPERSON said that he could not understand the need for the three categories of citizenship. The Committee obviously wanted a clear picture of the significance of the distinction, especially in so far as it affected children. There was no doubt that such categorization could lead to discrimination.

58. Mrs. SARDENBERG asked whether identity cards were issued to children and whether there were any differences between the categories of citizenship with respect to access to such services as health and education.

59. U SANN MAUNG (Myanmar) said that identity cards were, in fact, used. They were issued to children at age 12. All citizens could move freely about the country and had equal access to social services.

60. Mrs. SANTOS PAIS said that, if there were no differences, she could not understand why there had to be three categories.

61. U SANN MAUNG (Myanmar) said that the law had been enacted by the previous Government, and he was not sure what its purpose had been. There were some differences between the categories, as had already been pointed out.

62. U AYE (Myanmar) said that all countries had citizens and non-citizens who enjoyed different rights. In Myanmar, the second and third categories were entitled to apply for full citizenship.

63. The CHAIRPERSON said that the statement in paragraph 57 (b), of the initial report that, according to the Myanmar Citizenship Law "there is hardly a chance for a child to be stateless or to be deprived of his nationality" apparently indicated that many different possibilities had been covered. Nevertheless, the Committee seemed to feel that such categorization lent itself to discrimination. Were there, in fact, any stateless children in Myanmar? The Committee had been informed that many of the returnees from Bangladesh had had difficulty in securing even the third category of citizenship, so there might well be some such children.

64. U AYE (Myanmar) said that any returnee who could not prove Myanmar or some other nationality was accorded foreigner status. All children born in Myanmar were entitled to one of the categories of citizenship. It was, of course, necessary to establish the bona fides of returnees. In Myanmar, every household had to maintain a list of residents. The lists were submitted to the local authorities, which issued registration cards to the residents. However, many persons in the first wave of returnees had been unable to produce evidence of such household registration.

65. The authorities had adopted a very flexible approach but had required undocumented persons to give information concerning their village of origin,

the name of the headman, etc. If they could provide such information, they were admitted. In many cases, in fact, even people who could not prove any local connection were also admitted.

66. During the second wave, the Myanmar authorities, in conjunction with the United Nations High Commissioner for Refugees (UNHCR), had entered into negotiations with the neighbouring countries concerning the status of the returnees. Those who could not prove a local connection were refused admittance. Children and adults had received equal treatment.

67. The CHAIRPERSON said that the Committee had been informed that many persons in the second wave of refugees who had been admitted to Myanmar were still experiencing great difficulty in obtaining citizenship.

68. U AYE (Myanmar) said that the problem had not yet been fully resolved.

69. Mrs. KARP said that it seemed to her that a person who had been born and brought up in Myanmar but could not secure full citizenship because he could not prove some technical detail about his ancestors might well feel that his rights and sense of identity were impaired. The impact of such a situation on children, amounted to a violation of the Convention.

70. U AYE (Myanmar) said that the authorities did adopt a flexible approach, but a line had to be drawn somewhere. Myanmar had borders with five other countries, with all of which it maintained excellent relations but which included the two most populous countries in the world. It could not afford to grant citizenship to everyone who came and asked for it. The Citizenship Law took into account the need to protect the interests of future generations - the need to contain the population.

71. Mr. KOLOSOV said he presumed that the essential difference between the three categories of citizenship was connected with property and inheritance rights.

72. Mrs. SANTOS PAIS said that, while it was not the responsibility of the Committee to question the conditions laid down by a State for the granting of nationality, it had to assess the extent to which such conditions were in conformity with the provisions of the Convention. Under the Convention, every child had the right to acquire a nationality. The Committee had been informed, however, that, in Myanmar, associate and naturalized citizenship could be withdrawn, thereby entailing the risk of statelessness - hence its concern.

73. Furthermore, she was aware that a system of identity cards had been in place in Myanmar since 1990. Such cards were not issued automatically but upon request, and applicants had to meet certain conditions. She was particularly concerned at the fact that the identity card contained information regarding religion and ethnic origin, which could easily lead to discrimination.

74. The CHAIRPERSON, reverting to the subject of the returnees, said that there was no question of a massive influx into Myanmar from neighbouring countries. A group of people, who were well known to the Myanmar authorities,

had returned to Myanmar from Bangladesh. The Committee's concern was that a high proportion of the returnees, including children, had apparently encountered difficulties in resettling in Myanmar and having their rights recognized.

75. U. AYE (Myanmar) said that that was precisely the type of concern which had been taken up by UNHCR with the Myanmar immigration authorities at a meeting held recently in Geneva. He was not, himself, in a position to provide detailed information, but the UNHCR staff members who had been directly involved might possibly be of assistance.

76. The CHAIRPERSON invited the members of the Committee to ask questions concerning the section of the initial report entitled "Definition of the child".

77. Mr. KOLOSOV said that sections 2 (a) and 2 (b) of the Child Law defined persons under and over the age of 16 as "children" and "youth" respectively, but there was only one further reference to "youth" in its subsequent provisions. The law was thus not in keeping with the provisions of the Convention, since it afforded no protection for children between the ages of 16 and 18, and should be amended.

78. Mrs. KARP said that, under the Law, persons who allowed a girl child in their care under the age of 16 to engage in prostitution were liable to punishment. She wondered why the age limit for protection in such cases was 16 rather than 18 and why there was no reference to the boy child.

79. U. AYE (Myanmar) said that children up to the age of 18 were protected by law, as borne out by the very title of the legislation in question. A distinction was drawn between children and youths for the purposes of placement in institutions. Boys and girls were afforded the same protection against social evils such as prostitution.

80. Mrs. KARP said that section 66 of the Child Law referred specifically to the responsibility of a guardian towards a girl under 16 who was involved in prostitution. How could that be seen as providing protection for boys also?

81. U. AYE (Myanmar) said that prostitution had previously been considered as affecting girls only, but it had since been recognized that boys could also be victims and thus needed protection.

82. U. THAN PO (Myanmar) said that, when the Child Law had been drafted, prostitution of boys had been far less common than in recent times. The point was a valid one and would be taken into account when the implementing regulations for the Child Law were being prepared.

83. U. AYE (Myanmar) said that his Government would welcome the Committee's advice concerning improvements that could be made, particularly with regard to the distinction between children and young people. there must be other States parties to the Convention where the age of majority was 16 and it would be useful to learn how they reconciled their legislation with the provisions of the Convention.

84. The CHAIRPERSON said that he would prefer not to enter into a discussion of the very complex issue of the age of majority and how it could be reconciled with the provisions of the Convention. Individual members of the Committee would, however, be happy to give the Myanmar delegation some advice on the matter outside the meeting.

85. Mrs. SANTOS PAIS said it was very important to afford children up to the age of 18 the best possible protection against forms of exploitation such as prostitution. She was also gravely concerned about the very low age of criminal responsibility, whereby a child between the age of 7 and 12 who was deemed to have understood that he or she had committed an offence was liable to the penalties normally applied to adults. Myanmar should consider raising the age of criminal responsibility to the age of civil majority, as recommended in "The Beijing Rules".

86. U. AYE (Myanmar) said that those suggestions would be conveyed to the competent authorities in his country.

87. Mr. KOLOSOV said he had to insist that Myanmar's Child Law was not in keeping with the provisions of the Convention and must be amended. He rejected the assertion that all children were guaranteed adequate protection by the title of the law, despite the distinction drawn between youths and children. The existence of such a distinction effectively excluded children between the ages of 16 and 18 from the protection of the Law and, consequently, of the Convention.

88. The CHAIRPERSON invited the members of the Committee to ask questions concerning the section of the initial report entitled "General principles".

89. Mrs. BADRAN said that mention was made in Myanmar's written replies of services provided by the authorities to certain groups of the population as a means of preventing and eliminating discrimination. Since prejudice was usually a question of attitude, however, she wondered whether there were any other programmes aimed at changing discriminatory attitudes towards the groups of children listed under item 10 of the list of issues (CRC/C/Q/Mya.1).

90. Mrs. SANTOS PAIS said that Myanmar's legislation did not fully reflect article 2 of the Convention since it made no reference to discrimination on grounds of national, ethnic or social origin or of political or other opinion held by the child or his or her parents or legal guardians. How was a child protected against penalties when the views expressed by members of his or her family ran counter to those of the authorities?

91. She would welcome some information on the action being taken to ensure equal opportunities for children living in the rural areas, especially with regard to education. Were additional funds earmarked for that purpose? Were school materials available free of charge? How were ethnic languages used in schools in Myanmar and were teachers given material and other support in that connection?

92. She would like the delegation to give some illustrations of the way in which the best interests of the child were taken into account in the courts of

law, in schools and in the family environment and to inform the Committee how the legislative bodies reflected the best interests of the child when drafting or amending legislation.

93. Mrs. KARP said she would welcome examples of legislation that required the courts and administrative bodies to hear the views of children before taking decisions affecting them, together with details of how such legislation was implemented. Who acted on behalf of the child, for instance?

94. Mrs. SARDENBERG asked what opportunity children had to participate in discussions, and decisions on matters affecting them, both in the family environment and in the schools. Moreover, with respect to the schools, she would like to have further information on corporal punishment and expulsion.

95. Mrs. BADRAN said she had received the impression from the report and the written replies that the whole concept of the participation of children was unclear to the Myanmar authorities. For instance, reference had been made in the written replies to activities being assigned to children. The whole point was that children should have a say in their own affairs by planning their own activities and setting up their own associations so that they could express their views both individually and collectively. That was an important preparation for life in a democratic society.

96. The CHAIRPERSON said that the Committee was clearly behind schedule in its work but it nevertheless appreciated the efforts of the Myanmar delegation to answer the many detailed questions that had been asked, particularly in view of the language difficulties encountered. He hoped that it would be possible to complete the dialogue in the time available.

The meeting rose at 6.05 p.m.